

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MAGGIE CAMPBELL,
Plaintiff,

v.

EBAY, INC., et al.,
Defendants.

Case No. 13-cv-02632-HSG

ORDER DISMISSING COMPLAINT

Re: Dkt. Nos. 126, 128

Pending before the Court are Defendants' motion to dismiss Plaintiff's fourth amended complaint for failure to prosecute and Plaintiff's motion to dismiss her fourth amended complaint without prejudice. Both parties agree that the case should be dismissed; they dispute only whether the dismissal should be with or without prejudice.

Under Federal Rule of Civil Procedure 41(a)(2), a district court may dismiss an action at a plaintiff's request "on terms that the court considers proper." Such a motion "should be granted unless a defendant can show that it will suffer some plain legal prejudice as a result of the dismissal." *Hepp v. Conoco, Inc.*, 97 F. App'x 124, 124 (9th Cir. 2004). "[L]egal prejudice does not result merely because the defendant will be inconvenienced by having to defend in another forum or where a plaintiff would gain a tactical advantage by that dismissal." *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001). Rather, legal prejudice is "prejudice to some legal interest, some legal claim, some legal argument." *Id.* at 976.

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1 Defendants have not shown that they will suffer legal prejudice as defined by the Ninth
2 Circuit if Plaintiff's complaint is dismissed without prejudice. Accordingly, the Court DENIES
3 Defendants' motion, GRANTS Plaintiff's motion, and DISMISSES WITHOUT PREJUDICE
4 Plaintiff's fourth amended complaint. The case management conference currently scheduled for
5 July 7, 2015, is vacated. The Clerk shall close the file.

6 **IT IS SO ORDERED.**

7 Dated: July 2, 2015

8 
9 HAYWOOD S. GILLIAM, JR.
United States District Judge

United States District Court
Northern District of California